1945. File No. S Dwr 7/45

Examined

Legal DEPARTMENT

A BRANCH

Subject:— Suits Dharwar,

C.S.No. 52 of 1944.

Chanaveergouda Chanabasangouda

Gangangoudar - Plaintiff

vs

The Provincial Government of Bombay Defdt.

Claim Rs 72-8-0

Re For declaration that the plaintiff is the owner of a strip of land situated in the Gaothan of the village of Mundaur and that he has a right of way over Government land between the Chavdi and the Cattle Pound

P-8

E

File No. S Dwr 7/45

Bld. Scott. Slip 24-B

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1)	Printed G.R. L.D. No. 1888-A. 9th March 1945	For a declaration that the Plff. is the owner of a strip of land. He has a right of way over Govt. land Sanctioning the defence of the suit.	11
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Appeal against order No.L.N.D.A.P. 149, dated 19th February 1943 of the Collector of Dharwar.

No.O-202 of 1944.
Poona, 19th October 1944.

Read :

Appeal petition, dated 5th January 1944, of Chanvirgouda Chanbasangouda Gangengoudar of Mudenur, taluka Ranebennur, District Dharwar.

Opinion, dated 10th October 1944, of the Commissioner, S.D., Member, Bombay Revenue Tribunal.

Opinion, dated 17th October 1944, of Dewan Bahadur P.B.Shingne, Non-official Member, Bombay Revenue Tribunal.

Opinion, dated 19th October 1944, of Sir Govind Madgavkar, President, Bombay Revenue Tribunal.

ORDER.

This is an appeal by Chhanavirgouda Chanbasangouda Gangengoudar of Mudenur against the order, No.L.N.D.A.R P.149, dated 19th February 1943, of the Collector of Dharwar, confirming in appeal, the order, No.N.C.R.S.R.527, dated 7th March 1942, of the Prant Officer, in the matter of an alleged encroachment on Government land in the gaothan of Mudenur.

2. It is evident from the letter of the Government Pleader, Dharwar, No.315, dated 12th August 1944, and the letter, No.L.N.D.A.P.149, dated 28th September 1944, of the Collector of Dharwar that the appellant has filed a civil suit on 19th February 1944 against Government in the above matter in the Court of the Joint First Class Sub-Judge, Dharwar, and that the suit is still pending. The case is, therefore, sub-judice and under regulation 3(ii) of the Bombay Revenue Tribunal Regulations, this Tribunal ceases to have jurisdiction in the matter.

3. Without expressing, therefore, any opinion on the merits and following our decision in the appeal by Bhagoji Balaji Keer (Case No.868(O/12) Selected Decisions, part V, for the period ending 31st March 1942, p.288), the appeal must be dismissed.

G.D.Madgavkar,
President,
Bombay Revenue Tribunal.

V.S.Bhide,
Commissioner, S.D. and
Member, Bombay Revenue Tribunal.

P.B.Shingne,
Non-official Member,
Bombay Revenue Tribunal.

TLK
18-11

Draft Written Statement.

[1. Plff's suit is barred by limitation under sec.37(2) of the Bom.L.R.C.]

1. [2.] The allegations in paragraph 2 of the plaint are not admitted. The plff's title to the properties in suit and the enjoyment thereof as owner are denied. Neither the plff nor his predecessors-in-title ~~to the properties~~ [have] any right or title to the properties in suit nor [are] they ever in ~~enjoyment~~ possession thereof as such owners. The allegation in para 2 of the plaint that the plff obtained the sites in suit to his share at a family partition in 1929 is not admitted. The sites in suit are not included as joint family property in the sch[illegible] at Ser.Nos.14 and 15 attached to the plaint in Spl.Suit No. 179 of 1901 as alleged by the plff and this deft is not bound by this description of the properties in the said Sch.

2. [5.] The further allegations in that para regarding the enjoyment and possession of the suit sites by the plff and his family by adverse possession is also denied. Plff has not obtained any title to the suit sites by virtue of adverse possession as alleged.

3. [6.] The allegation in para 3 of the plaint regarding the ill-feelings between plff and his bhaubands and that the encroachment proceedings were the result thereof are not admitted. The allegations in para 4 of the plaint are denied.

4. [7.] The deft denies plff's claim to the right of way between the Chavdi and the cattle-pound and asserts that plff has no right to fix a door at point 'A'. The deft submits that plff had unauthorisedly fixed a gate at point 'D' blcoking the road to the village.

5. [8.] The sites in dispute which are open and within the goanthana of the village vest in the deft under sec.37 Bombay Land Revenue Code (Bom.L.R.C.) and the deft is the owner thereof.

6. [9.] The order of the Assistant Collector upheld by the Collector is correct and legal, [valid and justified.] The allegations to the contrary in para 4 of the plaint are denied.

7. [10.] It is therefore submitted [The deft submits] that the plff's suit should be dismissed with costs.

Dharwar Civil Suit No. 52 of 1944.

This is an encroachment suit in which the plaintiff claims to be the owner of a strip of land ~~which~~ situated in the gaothan or the village of Mundenur and appears to be a part of the road. The plaintiff also claims a right of way over Government land between the Chavdi and the cattle pond from the point A shown in the sketch on p. 11 of file I. The right of way is claimed in respect of his own land marked E F G H B I J K in the sketch. The burden of proving the title and his right of easement lies on the plaintiff. There is no satisfactory evidence to prove either. Sanction may be accorded to the defence of the suit on the lines of the accompanying brief.

The D.G.P. has forwarded draft written statement to be filed in the suit. The draft has been revised and retyped and put up for approval.

I have corrected a few errors in the Chronological Statement of facts:

1. The date of the sketch at p 11 File I is 3rd Jany 1940. 27 Feb '42 is the date of AC's inspection of the site.

2. The report was made by the Kulkarni alone, or at least is signed by him alone.

3. The sketch at p 11 does not correspond exactly to the encroachment alleged by the Kulkarni. Reference is therefore made to the Kulkarni's sketch.

4. The suit was filed on 19th Feb 1944 — vide Copy of DGP's letter (Page 3 ante) & Tribunal's order (Slip M).

5. A-A at p 11 is incorrect. The Sketch at p 20 of the File I does not show the open space to be of the plaintiffs' ownership. It is shown & marked as the road to the river. Para 4 of the Asst Colr's order in the S.37(2) enquiry & also does not bear out A-A. The version given in the ~~Sketch~~ Statement filed by DGP appears to be more correct.

6. A few minor amendments are also made in the Statement of Defence Grounds

Defence & the written statement, in pencil

The draft will require approved.

Pl. may go to Secy Rd., after Chron. Statement & Grounds of defence are retyped, as amended by me in pencil

RLA

21/2/45

Please check up the date of the sketch and correct the brief accordingly

Pmm

24/2/45

With reference to the A.A.L.'s note regarding corrections in the brief, it is respectfully submitted as follows.

1. As directed by the R.L.A. the date of the sketch at P. 11 of File I has been checked up. The correct date appears to be 28th April 1939. It is written in faint ink below the circle inspector's signature. 3rd January 1940 is probably the date on which the sketch was verified on the spot by the Inamdar & 9th February 1942 is the date on which the site was inspected by the Assistant Collector.

JS. 2/3/45.

2. The original report (in Kanada language) at P. 1 of File I appears to have been signed by both the Patil and the Kulkarni. I am told that even in this original report the expression used is the Kanada equivalent of "village Officers" and that it is not a report made by the Kulkarni alone. The order of the Assistant Collector also refers to this report as the report of the V.Os. Hence I had used the expression "village Officers". At any rate, a Kulkarni is also a village Officer.

Impression Statement accordingly

2/3/45

3. The sketch at p. 5 of File No 1 is not drawn accurate on scale. It appears to be a rough map drawn by the Kulkarni who says in the report mentioned above that owing to plaintiffs obstruction no measurements could be taken and hence no dimensions were given. The substance of the village officials report is, that the plaintiff is unauthorizedly making use of some open space belonging to Government. This is shown in black colour in the Kulkarni's map and would correspond to the area E F G H B I J K in the map at p. 11; (2) that with the intention of further encroaching upon Government land between the bhavdi and the cattle pound the plaintiff has put up a door at A. This area is shown in green colour in the Kulkarni's map and is also shaded red in the map at p. 11; (3) that he has further encroached upon land beyond the western side of the wall surrounding the open space (shaded black) by erecting a fence and has thus blocked the public road. This area is shaded red in the Kulkarni's map and shown in broad pencil lines in the map at p. 11. It therefore appears that the encroachments alleged by the village officers are not different from those shown in the map at p. 11 which is drawn by the Circle Inspector. It is this sketch only which is referred to in the Assistant Collector's order.

4. In paragraph 17 of the C.S.F submitted by the D.S.P. the date of the suit is stated to be 15-7-1944. That is also the date given in the copy of the plaint (in Kannada) at the end of Sheet 2 in the file II. However the correct date is 19-2-1944 as stated by the A.A.C.R. The mistake is regretted.

5. As to A' A', attention is respectfully invited to paragraph 4 of the Assistant Collector's report in

which it is stated "In this map (p. 20) the existence of a road to the north of Mr. Chaturbhujdas (plaintiff) land's side (E F G H B I J K) is clearly shown. This is the road which is chiefly used the Ambegers when going from their land to the river." It is here that the present encroachment has been made. The point that is to be made out was that had this side been of the ownership of the plaintiff, he would have included it in 1532 within the wall constructed by him around his own side E F G H B I J K. The exclusion of this side at that time militates against the plaintiffs present claim of ownership thereon. A'A' only reproduces in other words the statement of the Assistant Collector quoted above.

The brief as corrected has been returned. It may kindly be marked to the Govt. A. G.

RH
1/3

Ahmedabad.

A.A.G.R. 2/3
R.G.A.

Amr 3/3/45

x 1748 d 5. 3/4

Govt RD.

For [illegible]

6/3

In the Court of the Joint First Class Sub-Judge
at Dharwar.

Civil Suit No.52 of 1944.

Chanvirgauda Chanbusangouda Ganganagoudar. ... Plaintiff;

versus

The Province of Bombay. ... ... Defendant.

Written [redacted]t of the abovenamed Defendant is as follows:-

1. The allegations in paragraph 2 of the plaint are not admitted. The plaintiff's title to the properties in suit and the enjoyment thereof as owner are denied. Neither the plaintiff nor his predecessors-in-title had any right or title to the properties in suit nor were they ever in possession thereof as such owners. The allegation in para 2 of the plaint that the plaintiff obtained the sites in suit as his share at a family partition in 1929 is not admitted. The sites in suit are not included as joint family property in the items at Ser. Nos.14 and 15 in the Schedule attached to the plaint in Special Suit No.179 of 1901 as alleged by the plaintiff. This defendant is not in any case bound by this description of the properties in the said Schedule.

2. The further allegations in that para regarding the enjoyment and possession of the suit sites by the plaintiff and his family by adverse possession are also denied. Plaintiff has not obtained any title to the suit sites by virtue of adverse possession as alleged.

3. The allegation in para 3 of the plaint regarding the ill-feelings between plaintiff and his bhaubands and that the encroachment proceedings were the result thereof are not admitted. The allegations in para 4 of the plaint are denied.

4. The defendant denies plaintiff's claim to the right of way between the Chavdi and the cattle-pound and asserts that plaintiff has no right to fix a door at point 'A'. The defendant submits that plaintiff had unauthorisedly fixed a

gate at point 'D' blocking the road to the village.

5. The sites in dispute which are open and within the gaothan of the village vest in the defendant under Section 37, Bombay Land Revenue Code, and the defendant is the owner thereof.

6. The order of the Assistant Collector, upheld by the Collector, is correct and legal. The allegations to the contrary in para 4 of the plaint are denied.

7. It is therefore submitted [redacted] plaintiff's suit should be dismissed with costs.

District Government Pleader, Dharwar.

I, District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 7 above, is true according to the information received and believed to be true. This verification is made at on the day of

District Government Pleader, Dharwar.

Suits.

Dharwar.

For a declaration that the plaintiff is the owner of a strip of land situated in the *gaothan* of the village of Mundenur and that he has a right of way over Government land between the *Chavdi* and the cattle pound.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 1888-A.

Bombay Castle, 9th March 1945.

Letter from the Collector of Dharwar, No. L.A.W. 439, dated the 12/13th December 1944

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.

Civil Suit No. 52 of 1944.

(Now Hubli C. S. No. 256 of 1944).

Chanaveeragouda Chanabasangouda Gangan-goudar ... ... Plaintiff;

versus

The Provincial Government of Bombay ... Defendant.

Claim—Rs. 72-8-0.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 332, dated the 21st December 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 1888, dated the 9th March 1945—Forwarding a copy of the brief with its accompaniments in advance.

*RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P.N.Moos

P. N. MOOS,
Secretary to Government.

G. R. No. 1888-A, L. D., dated 9th March 1945.

Issued 18

To

* The Revenue Department,
* The Commissioner, Southern Division.
* The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1945

Copy forwarded for information and guidance to

Subsequent correspondence
2- File in S Dhar 145- (new file)

29 8 51 K3

DHARWAR CIVIL SUIT NO. 52 OF 1944.

Chronological Statement of Facts.

File I, p. 11.

1. The suit is for a declaration that the plaintiff is the owner of the site shaded with broad red pencil lines between the points B and D in the sketch dated the 28th April 1939 and that he has a right of way from the point A, over the site between the *Chavdi* and the cattle pound shown in the sketch. The site in dispute is situated in the *gaothan* of the village of Mudenur (taluka Rannebennur).

File I, p. 1.
Translation, p. 3a.

2. On 8th October 1938, the village officers of Mudenur reported to the Mamlatdar of Rannebennur that the paintiff Chanaviragouda Chanabasanagouda had unauthorizedly erected a compound wall around Government land (roughly shown in black and red in the sketch which accompanied the report) and had also fixed a door on the site at a point between the *Chavdi* and the cattle pound with the intention of encroaching upon Government land.

File I, p. 5.

File I, p. 27.

3. On 6th January 1940, the Mamlatdar reported to the Prant Officer, 2nd Division that the plaintiff had inauthorizedly put up a door at point A, between the *Chavdi* and the cattle pound and had also blocked the road leading from Ambiger street to the river by erecting a fence. He recommended a formal inquiry under section 37 (*2*) of the Land Revenue Code.

File I, pp. 133–136.

File I, p. 11.

4. On 7th March 1942, the Assistant Collector, after holding an inquiry under section 37 (*2*) declared that the site shown in red pencil lines between the points B and D, in the sketch dated the 28th April 1939 being a public road belonged to Government. He also ordered that the door opened by the plaintiff at point A in the sketch should be blocked in order to prevent the acquisition of any easement of a right of way over Government land between the *Chavdi* and the cattle pound. He also imposed upon the plaintiff a fine of Rs. 5 for having encroached upon the public road.

File I, p. 141.
File I, p. 163.

5. On 2nd May 1942, the plaintiff preferred an appeal to the Collector but the latter dismissed it on 19th February 1943.

File II, pp. 165–187.

6. On 19th March 1943 and 29th June 1943, the plaintiff gave notices of the suit separately to the Collector of Dharwar and to the Provincial Government of Bombay.

7. On 5th January 1944, the plaintiff preferred an appeal to the Bombay Revenue Tribunal. On 19th October 1944, the Tribunal dismissed the appeal summarily as the plaintiff had in the meantime filed the suit.

8. On 19th February 1944, the plaintiff filed this suit in the Court of the First Class Subordinate Judge, Dharwar.

Grounds of Defence.

1. The plaintiff's allegations regarding title to the site in dispute should be denied and it should be urged that under sections 101 and 102 of the Evidence Act the burden of proof lies on him. The order of the Assistant Collector declaring the site to be the property of Government is *prima facie* correct and binding on the plaintiff and the Court will be guided by it unless it is shown to be wrong. As will be seen from the sketch dated the 28th April 1939 the site between the points B and D is a part of the road from Ambiger Lane to the river. Under section 37 (*1*) of the Land Revenue Code therefore it is presumed to belong to Government; that presumption cannot be displaced unless and until the plaintiff proves by independent evidence that he has a better title than Government or that he has been in adverse possession for the full statutory period of 60 years. (Vasta *v.* Secretary of State I.L.R. 45 Bom. 789; Suraji *v.* Secretary of State 39 Bom.L.R. 216; Secretary of State *v.* Chimanlal 44 Bom.L.R. 295.)

File I, p. 11.

2. On merits there is no satisfactory evidence in plaintiff's favour to prove his little. It appears that in 1932 one Chanabasappa Karabassappa Yeresimi had applied to the Prant Officer for a grant of the land marked A, B, C, D, in the sketch at page 20 of File I. This land appears to be the same as the land marked E F G H B I J K in the sketch dated the 28th April 1939. The application was however rejected on

File I, p. 21.

7th August 1933. Now in the proceedings under section 37 (2) of the Land Revenue Code the plaintiff has produced and relied upon the sketch at page 20 of File I. He relies on the fact that the Ambiger Lane, at one end of which the site in dispute lies, was shown in the sketch as being closed the end by a row of bushes, and maintains that it was not at all a road to the village or as held by the Assistant Collector in the section 37 (2) proceedings, from the village to the river. As will be seen from paragraph 4 of the Assistant Collector's Order, the case of 1933 was started when the present plaintiff enclosed his land with a stone wall. From the area thus enclosed, he excluded the land in dispute in this suit; this proves that he did not regard it as belonging to him. The evidence produced by the plaintiff is therefore of no assistance to him. The documentary and oral evidence produced by the plaintiff has been carefully considered in the order of the Assistant Collector and reliance should in general be placed on it.

3. As regards his claim to a right of way from the point A in the sketch it should be pointed out that no such easement can be said to have been acquired by the plaintiff against Government unless it has been peaceably and openly enjoyed by him as a easement and as of right without interruption for a period of sixty years. (*See* Indian Easements Act, 1882, section 15). The onus of proving that the right has been peaceably and openly enjoyed for sixty years will be on the plaintiff. There is in this case no evidence of such peaceful, open and uninterrupted enjoyment of the right for the statutory period. In his statement dated 12th October 1939 before the Mamlatdar, the plaintiff had stated that the door at point A (in the sketch dated the 27th February 1942) was fixed by him five or six years previously in place of an old door which had been washed away in the floods. This statement appears to be untrue because in the sketch of 1932 no such door has been shown at the corresponding point between the *Chavdi* and the cattle pound. The oral evidence produced by the plaintiff on this point has also been disbelieved by the Assistant Collector. It should therefore be urged that the plaintiff's claim to a right of way over Government land from the point A also fails.

File I, p. 28a.

File I, p. 28.

4. Before the revenue officers the plaintiff appears to have produced a copy of the plaint in a partition suit of 1901. He appears to have relied upon the description of the properties at serial Nos. 14 and 15 in the plaint. The relevant extract from the plaint is given in English at page 82A* of File I. In paragraph 5 of his appeal petition to the Collector (file I, page 143) the plaintiff contends that this description shows the suit land to be part and parcel of the open land lying to its South. This conclusion does not necessarily follow from the recitals in the extract of the plaint which are not very clear. As to this piece of evidence the Collector has observed in his Order (page 163 of file I); that the boundaries of the properties Nos. 14 and 15 do not tally with the existing boundaries shown in the sketch and that the plaintiff has not been able to prove that they coincide with the existing boundaries. The plaintiff's evidence is, in short, far from satisfactory and he is not therefore entitled to any relief.

*This page has been attached at a wrong place in the file, between pp. 70 and 71.

5. The plaintiff might further try to establish a claim on the basis of adverse possession. In order to succeed in this plea he must prove not only that he has been in possession of the suit land for the full statutory period of sixty years but that his possession has also been adequate in continuity, publicity and extent (Articles 144 and 149 of the Limitation Act; Radhamony Debi *v.* Collector of Khulna I.L.R. 27 Cal. 943; Secretary of State *v.* Chellikeny Rama Rao I.L.R. 39 Mad. 617). The land here is unoccupied open land in the village *gaothan* and as will be seen from the sketch it is a part of the road. There is thus no evidence to show that the plaintiff has been in judicial possession or that his possession has been adequate in any of these respects.

6. For these reasons therefore, it should be urged that the suit fails and must be dismissed with costs.

New file
S. Asst. Dr. 1/45
10/8/45